

MINUTES
COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Tuesday, April 1, 2008

Division One

A118438 – The People v. Adam Keith Reynolds.

By The Court: It is ordered that the opinion filed herein on March 28, 2008, be modified as follows: 1. In the title of the document change “Division Three” to “Division One.” There is no change in judgment. Margulies, Acting P.J. (Not for Publication.)

Division Two

A119496 – The People v. Lucciano Dupes.

The judgment of conviction is affirmed. Richman, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Four

A114930 – Simon David Aviel et al. v. Christina Ng et al., Khalil Abusharkh et al.

By The Court: The request for publication of this court’s February 28, 2008 opinion is granted and it is hereby ordered that said opinion be published in the Official Reports. Reardon, Acting P.J. (Certified for Publication.)

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Wednesday, April 2, 2008

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Stein, Justice, Swager, Justice, Fred Abad, Deputy Clerk, and CHP Officer Tammy Smith, Bailiff.

A118233 Estate of Gertrude Daley, Deceased.
 Ronald Daley,
 v.
 Gregory O’Keeffe.
Cause called and argued by Ronald Daley, appellant in propria persona and Daniel Conrad, counsel for respondent. Cause ordered submitted.

Justice Marchiano left the bench, Justice Margulies joined the bench, and Justice Stein presided over the remainder of the calendar.

A117157 Frank Chavez,
 v.
 Netflix.
 Laura Ellis, et al.
Cause called and argued by Daniel Brown, counsel for appellant Laura Ellis, Steven Helfand, counsel for appellant David Meininger, C. Benjamin Nutley, counsel for appellant John Vogel via teleconferencing, Keith Eggleton, counsel for respondent Netflix, Inc., and Adam Gutride, counsel for respondent Frank Chavez. Argument was interrupted by telephone connection problem and resumed after Ford v. Krug was argued and submitted. Cause ordered submitted.

A116327 Leathan Ford,
 v.
 Edward Krug, et al.
Cause called and argued by A. Charles Dell’Ario, counsel for appellants, and Joshua Hill, counsel for respondent. Cause ordered submitted.

A114589 Monica Gong,
 v.
 Terry Kwong.
Cause called and argued by Brand Cooper and Rita Johnson, counsel for appellant, and Robert Roth, counsel for respondent. Cause ordered submitted.

Court recessed until 1:45 p.m.

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Wednesday, April 2, 2008

The Court reconvened at 1:45 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Swager, Justice, Margulies, Justice, Mary Quilez, Deputy Clerk, and CHP Officer Martin Fredericks, Bailiff.

A114023 The People,
 v.
 Horace Bordelon.
Cause called and argued by Susan Burke, counsel for appellant and Brent Wilner, counsel for respondent. Cause ordered submitted.

Justice Swager left the bench, Justice Stein joined the bench.

A117297 The People,
 v.
 Milton Charles Eaton.
Cause called and argued by R. Stevens Condie, counsel for appellant and Sharon Birenbaum, counsel for respondent. Cause ordered submitted.

A117557 The People,
 v.
 Marion W.
Cause called and argued by Kathleen Novoa, counsel for appellant, and Ronald Niver, counsel for respondent. Cause ordered submitted.

A117959 Alexis Boissiere,
 v.
 BNSF Railway Company.
Cause called and argued by Alexis Boissiere, appellant in propria persona, and Thomas A. Cregger, counsel for respondent. Cause ordered submitted.

Court Adjourned

Wednesday, April 2, 2008 (Continued)

Division One

A117059 – Charles Tuttle v. Coastal Auto Mart, Inc. et al.

The judgment is affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

A111024 – The People v. Anthony Wayne Myers.

We affirm the trial court's judgment, except that we reverse counts 1, 12, 13, and 15 through 21. Furthermore, the trial court's sentences for counts 26, 28, 31, 32, and 36 are vacated, and this matter is remanded to the trial court for further proceedings consistent with this opinion. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

A116523, A119262 – Joseph and Mary Garza v. Asbestos Corporation, Ltd.

By the Court: On the Court's own motion, the opinion filed March 28, 2008 is modified as follows. The first paragraph on page one is modified to read: (See Order). The caption is modified to include both case number A116523 and case number A119262. There is no change in judgment. McGuiness, P.J. (Certified for Publication.)

Division Five

A114462, A115271, A117204 – In re Khalah S., et al., Persons Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Laquanda S., Darnell W.

The juvenile court's orders are affirmed. Stevens, J.* We Concur: Simons, Acting P.J., Needham, J.

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

Thursday, April 3, 2008

Division One

A118621 – The People v. James Zorro Ritch.

The judgment is modified to stay the sentence on the burglary conviction pursuant to Penal Code section 654. As so modified, the judgment is affirmed. The trial court is directed to prepare and forward an amended abstract of judgment reflecting the modification to the Department of Corrections. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

A117699 – In re L.G., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Linda G.

The orders appealed from are affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Five

A116597 – The People v. Vincent Lee Rosenbalm.

The commitment order is vacated and the matter is remanded with the following directions: (1) the court shall hold a hearing on the appellant's *Marsden* motion concerning Thompson; (2) if appellant prevails on his *Marsden* motion, the court shall appoint new counsel to assist him for this purpose and shall entertain such applications as newly appointed counsel may make; and (3) if newly appointed counsel does not make any motions, any motions made are denied, or appellant's *Marsden* motion is denied, the court shall reinstate the commitment order. Simons, J. We Concur: Jones, P.J., Stevens, J.* (Not for Publication.)

A118188 – In re Gabriella P., a Person Coming Under the Juvenile Court Law. Contra Costa County Department of Children and Family Services v. Summer P. et al.

The orders terminating mother's and father's parental rights are affirmed. Jones, P.J. We Concur: Simons, J., Needham, J. (Not for Publication.)

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

Friday, April 4, 2008

Division One

A119417 – The People v. Paul Erias Stelly, Sr.

Counsel represented defendant at all stages of the proceedings. There were no errors in the proceedings or in the sentence. The judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

Division Two

A117610 – Michael Harrington v. Russell A. Robinson et al.

The judgment is affirmed. Richman, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Division Three

A117162 – The People v. Efrain Rios Sanchez.

The judgment is affirmed. Siggins, J. We Concur: Pollak, Acting P.J., Horner, J.* (Not for Publication.)

Division Four

A117574 & 117576 – Robert W. Wyndelts v. Bruce Halvax et al.

The judgment is affirmed. Respondent is awarded his costs on appeal. Ruvolo, P.J. We Concur: Reardon, J., Rivera, J. (Not for Publication.)

A117115 – John Kast v. Anna Karin Antonsson

The judgment is affirmed. Costs on appeal are awarded to respondent. Ruvolo, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, April 4, 2008 (Continued)

Division Five

A115272 – The People v. \$224,060.89 United States Currency, Casey Christopher Wheeler et al.

The order denying the motion to set aside the default judgment is reversed and remanded. Appellants are awarded costs on appeal. Simons, J. We Concur: Jones, P.J., Stevens, J.*

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

Monday, April 7, 2008

Division One

A116807 – The People v. Andres Anselmo Perez.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

A116399 – The People v. Kendricks R. Woods.

The order requiring defendant to pay \$12,082.23 in victim restitution is reversed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Certified for Publication.)

Division Five

A112463 – The People v. Ronnie Dean Jones.

By The Court: It is ordered that the opinion field herein on March 25, 2008, be modified as follows: (See Order). There is no change in judgment. Jones, P.J. (Not for Publication.)

Tuesday, April 8, 2008

Division Two

A118494 – Leonard Fassler v. Pacific Star, LLC.

The May 15, 2007, order is affirmed. Haerle, J. We Concur: Kline, P.J., Richman, J. (Not for Publication.)

A118133 – Leonard Fassler v. Pacific Star, LLC.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Richman, J. (Not for Publication.)

A116968 – The People v. Gary Winn Perry.

The judgment of conviction is affirmed. Richman, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Division Three

A117526 – Jennifer Moore v. Thomas Hill, et al.

A118678 – Jennifer Moore v. Richard Hatfield, et al.

Upon the court's own motion, in the interests of judicial economy, and good cause appearing, it is ordered that the above-captioned appeals in docket number A117526 and A118678 be consolidated for the purposes of oral argument and decision. McGuiness, P.J.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Tuesday, April 8, 2008

The Court convened at 9:30 a.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Ruvolo, P.J., Reardon, J., and Rivera, J.; Channing Hoo, Deputy Clerk; CHP Officer Marty Fredericks, Bailiff.

A118143 Caren Bufil
 v.
 Dollar Financial Group
Cause called. Robin Workman argued for appellant Bufil. James Carter argued for respondent. Cause submitted.

At this point, the court reconstituted itself to include Ruvolo, P.J., Sepulveda, J., and Rivera, J.

A114876 People
 v.
 Michael John King
Cause called. Peter F. Goldscheider argued for appellant King. David Rose argued for respondent. Cause submitted.

A116693 People
 v.
 Randall Harris Wood
Cause called. Che Hashim argued for appellant Wood. Gregg Zywicke argued for respondent. Cause submitted.

A114586 Robert J. Nielsen
 v.
 Michelle Nielsen
Cause called. Mark L. Musto argued for appellant Robert J. Nielsen. A. Charles Dell'Ario argued for respondent. Cause submitted.

Court adjourned at 10:48 a.m.

Wednesday, April 9, 2008

Division Two

**A118060 – In re Roger S., a Person Coming Under the Juvenile Court Law.
Humboldt County Department of Health and Human Services v. Crystal K.**

The order appealed from is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Richman, J. (Not for Publication.)

A118998 – The People v. Jermaine Samuel Odom.

The judgment is affirmed. Richman, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, April 9, 2008

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Presiding Justice McGuiness, Pollak, J., Siggins, J., and A. Reasoner, Deputy Clerk.

- A120110 People
 v.
 Superior Court of the County of San Francisco;
 Anthony Earl, Real Party in Interest
 Cause called and argued by Louise R. Ogden, counsel for Petitioner, and Christopher
 Gauger, counsel for real party in interest. Cause ordered submitted.
- A116565 In re the Marriage of Erica Revesz and Stephan Revesz
 Erica Revesz
 v.
 Stephan Revesz
 Cause called and argued by Albert Coombes, counsel for appellant Stephan Revesz,
 and G. Scott Gaustad, counsel for respondent Erica Revesz. Counsel for appellant
 and counsel for respondent appeared by telephone. Cause ordered submitted.

COURT ADJOURNED

Wednesday, April 9, 2008 (Continued)

Division Three

A117998 – The People v. Noelle Mary Donahue

The judgment is reversed and the matter remanded with the following directions. The court shall hold a hearing on appellant's *Marsden* motion. If the court finds that appellant establishes a colorable claim of ineffective assistance of counsel or that appellant and her attorney had become embroiled in such an irreconcilable conflict that ineffective representation was likely to result, the court shall appoint new counsel to assist her and shall entertain such applications as newly appointed counsel may make. The court shall reinstate the judgment if (1) the *Marsden* motion is denied, (2) the *Marsden* motion is granted but substitute counsel declines to file a new trial motion or other appropriate motion, or (3) the *Marsden* motion is granted but the trial court denies a new trial motion or other appropriate motions filed by substitute counsel. McGuiness, P.J. We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

Division Four

A117379 – In re D.W., et al., Persons Coming Under the Juvenile Court Law. Lake County Department of Social Services v. Patrick P., et al.

The order entered after the six-month review hearing is reversed and the matter remanded to the juvenile court for further proceedings consistent with this opinion and with our decision in the companion appeal. (*In re D.W., supra*, A115960.) Reardon, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

A115960 – In re D.W., et al., Persons Coming Under the Juvenile Court Law. Lake County Department of Social Services v. Patrick P., et al.

The disposition order is reversed and the matter is remanded to the juvenile court for further proceedings consistent with this opinion. Reardon, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

Wednesday, April 9, 2008 (Continued)

Division Five

A117392 – Matthew Orterry v. Mt. Diablo Unified School District et al.

The order sustaining the demurrer of defendant Paulsen without leave to amend, and the judgment of dismissal entered in his favor, are affirmed.

The order sustaining the demurrer of defendant Miller without leave to amend is affirmed to the sixth, seventh and eighth claims for relief, for negligence, negligent infliction of emotional distress and intentional infliction of emotional distress. It is reversed as to the second and third claims for relief, based on Welfare and Institutions Code sections 5150 and 5150.05, as is the judgment of dismissal entered in Miller's favor.

The order sustaining the demurrer of defendant District without leave to amend is affirmed as to the first, sixth, seventh and eighth claims for relief, for violations of Unruh/Bane Acts, negligence, negligent infliction of emotional distress, and intentional infliction of emotional distress. It is reversed as to the second and third claims for relief, based on Welfare and Institutions Code sections 5150 and 5150.05, and the fourth and fifth claims for relief, for false imprisonment and battery, as is the judgment of dismissal in District's favor.

The parties shall bear their own costs. Needham, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

A115655 – The People v. Tyrone T. Hill.

The judgment is modified to reflect that the prior conviction enhancement allegation under Health and Safety Code section 11370.2 is stricken; the reference to Penal Code Section 1203.07, subdivision (a)(11), shall be deleted from the abstract of judgment. As so modified, the judgment is affirmed. Needham, J. We Concur: Jones, P.J., Stevens, J.* (Not for Publication.)

A115057 – David Salma v. Daniel J. Capon.

The June 14, 2006 order is reversed in part. The seventh cause of action in Salma's January 20, 2006 original cross-complaint is dismissed without leave to amend pursuant to section 425.16. The fourth and seventh causes of action in Salma's March 21, 2006 amended cross-complaint are dismissed without leave to amend pursuant to section 425.16. Capon shall receive his costs on appeal. Stevens, J.* We Concur: Jones, P.J., Needham, J. (Certified for Publication.)

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

Thursday, April 10, 2008

Division One

A116590 – Erika K. v. Brett D., Nicole Q.

The family court's order awarding custody of Cecelia to Nicole is reversed, and the matter is remanded for further proceedings consistent with this decision. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Certified for Publication.)

A117811 – Lamonte H. Lawrence et al. v. Deutsche Bank National Trust Company.

The judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

A115316 – The People v. Richard Travis Maki.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

A115451 – The People v. Lance Jon Rebeles.

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

A119100 – In re Veronica G. et al, Persons Coming Under the Juvenile Court Law. San Mateo County Human Services Agency v. Samuel G., Sr.

The orders of the juvenile court after the six-month review hearing are affirmed. Horner, J.* We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, April 10, 2008 (Continued)

Division Four

A113635 – The People v. Victoria Green.

As to count 11, the judgment is reversed. However, “[w]hen a greater offense must be reversed, but a lesser included offense could be affirmed, we give the prosecutor the option of retrying the greater offense, or accepting a reduction to the lesser offense. [Citation.]” (*People v. Kelly* (1992) 1 Cal.4th 495, 582.) If, after the filing of the remittitur in the trial court, the People do not bring defendant to trial on the charged offense within the time limit of section 1382, subdivision (a)(2), the trial court shall proceed as if the remittitur constituted a modification of the judgment to reflect a conviction of a lesser included offense[†] and shall resentence defendant accordingly. (See *People v. Edwards* (1985) 39 Cal.3d 107, 118; *People v. Woods* (1992) 8 Cal.App.4th 1570, 1596; *People v. Garcia* (1972) 27 Cal.App.3rd 639, 648.) The judgment is affirmed in all other respects. Rivera, J. We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

A115723 – The People v. Don Jay Maszewski.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Division Five

A118789 – Albyn Douglas Mackintosh et al. v. Half Moon Bay Fire Protection District et al.

The order is affirmed.

The previously issued writ of supersedeas shall be dissolved upon the finality of this decision as to this court. (Cal. Rules of Court, rule 8.264(b).) Jones, P.J. We Concur: Simons, J., Needham, J. (Not for Publication.)

[†] See footnote 8 in opinion.

Friday, April 11, 2008

Division One

A117557 – In re Mario W., a Person Coming Under the Juvenile Court Law. The People of the State of California v. Mario W.

The dispositional order of April 23, 2007, is affirmed. The case is remanded with directions to make an express declaration as to count 1, as to whether the offense therein found true is a misdemeanor or felony and to recalculate the maximum period of physical confinement if appropriate, and to modify the jurisdictional finding as to count 2 so as to declare the offense found true therein to be a misdemeanor. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

A119945 – The People v. Martha Somers Sekander.

Our independent review of the record reveals no arguable issues.

Accordingly, the judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

A116565 – In re the Marriage of Erica and Stephan Revesz. Erica Revesz v. Stephan Revesz.

The judgment is reversed and the matter is remanded for correction of the amount of the equalizing payment and distribution of the proceeds of the sale of the Conestoga property, and in all other respects is affirmed. The parties shall bear their respective costs on appeal. Pollak, J. We Concur: McGuinness, P.J., Siggins, J. (Not for Publication.)

Division Four

A116896 – The People v. Jorge Chacon Rios.

The judgment is affirmed. Ruvolo, P.J. We Concur: Reardon, J., Rivera, J. (Not for Publication.)

A115296 – Sonia Cerna et al. v. City of Oakland et al.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Certified for Publication.)

Friday, April 11, 2008 (Continued)

Division Five

A112057 - L.H. v. The Superior Court of Contra Costa County; Contra Costa County Bureau of Children & Family Services, R.P.I.

The January 17, 2008 order terminating reunification services for Mother and setting a section 366.26 hearing is affirmed. Stevens, J.* We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

A102251 – The People v. Mauricio Picado.

The judgment remains in all respects affirmed, except as to the imposition of the upper term on count three and the imposition of the upper term on the gang enhancement alleged in count three. The matter is remanded to the trial court for resentencing. Needham, J. We Concur: Jones, P.J., Stevens, J.* (Not for Publication.)

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

Monday, April 14, 2008

Division One

A119662 – The People v. Juan Carlos Arias.

After a full review of the record, we find no arguable issues, and accordingly, affirm the judgment. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

A116399 – The People v. Kendrick R. Woods.

By The Court: It is ordered that the opinion filed herein on April 7, 2008, be modified in the following particulars: (See Order). There is no change in the judgment. Swager, Acting P.J. (Certified for Publication.)

Division Two

A117799 – The People v. Michael Koryak.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Division Four

A111802 – The People v. Clifford Aland Dilbert.

The trial court is directed to: (1) prepare an abstract of judgment on form CR-290.1, referencing defendant's consecutive six-year determinate term on count three; (2) prepare an amended abstract of judgment on form CR-292, deleting the reference to defendant's consecutive six-year determinate term on count three; (3) forward certified copies of the abstracts of judgment to the Department of Corrections; and (4) correct the minute order to delete the reference to a total term of 21 years to life and to reflect that defendant was sentenced to concurrent terms of 15 years to life on counts one, two, and four, and a consecutive six-year determinate term on count three, which defendant shall serve first. As modified, the judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Tuesday, April 15, 2008

Division One

A118368 – The People v. Oscar Munoz Samaniego.

In sum, we have thoroughly reviewed the record and find no arguable issues. While we have selected certain matters for discussion, we have scrutinized the record in its entirety. There are no issues requiring further briefing.

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Tuesday, April 15, 2008

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Haerle, Acting P.J., *Jones, P.J., Lambden, J., Officer Umeki and I. Santos, Deputy Clerk.

*Justice Barbara J.R. Jones, Presiding Justice of Division Five, sitting under assignment.

A117900 nSight Inc.,
 v.
 Peoplesoft, Inc.
Cause called and argued by Naren Chaganti, counsel for appellant, and James A. Hughes, counsel for respondent. Cause ordered submitted.

At this point of the proceedings, Jones, P.J., left the bench and Kline, P.J. joined the bench for the next case on calendar.

A117126 Richard Castro,
 v.
 T-Mobile USA Inc.
Cause called and argued by James Anthony Krutcik, counsel for appellant, and Jacqueline Bronson, counsel for respondent. Cause ordered submitted.

At this point of the proceedings, Kline, P.J., left the bench and Richman, J. joined the bench for the remainder of the calendar.

A115223 Kimberly McCarther et al.,
 v.
 Pacific Telesis Group et al.
Cause called and argued by David A. Rosenfeld, counsel for appellant, and J. Al Latham, counsel for respondent. Cause ordered submitted.

A114997/
A115857 In re the Marriage of Katherine T. Ford and John Ford.
 Katherine T. Ford,
 v.
 John Ford.

Cause called and argued by Robert Alex Roth, counsel for appellant/cross-respondent, and Paige Leslie Wickland, counsel for respondent/cross-appellant. Cause ordered submitted.

Court recessed until 1:30 p.m.

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION TWO

Tuesday, April 15, 2008

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Lambden, J., Richman, J., Officer Smith and I. Santos, Deputy Clerk.

- A118628 In re Eric Y., a Person Coming Under the Juvenile Court Law.
San Mateo County Human Services Agency,
v.
Khin Khin Y.
Cause called and argued by Alan Siraco, counsel for appellant, and Peter Finck,
counsel for respondent. Cause ordered submitted.
- A115843 David Grassi,
v.
Robert Q. Tang.
Cause called and argued by appellant, David Grassi, in propria persona, and
Steven Powers Burke, counsel for respondent. Cause ordered submitted.
- A112705;
A112830;
A113358 Tamalpais Union High School District,
v.
Jennifer E. Gill, a Minor, etc., et al.
Tamalpais Union High School,
v.
Presidio Sport & Medicine.
Cause called and argued by Gregory Stubbs, counsel for appellant and cross-
respondent Tamalpais, and James Costello, counsel for respondent and cross-
appellant Gill. Cause ordered submitted.

COURT ADJOURNED.

Tuesday, April 15, 2008 (Continued)

Division Three

A116690 – St. Vincent’s School for Boys, Catholic Charities CYO v. City of San Rafael.

By The Court: It is ordered that the request for publication filed April 7, 2008, by the Sonoma County Office of County Counsel is granted. The opinion filed hereinon March 18, 2008, was certified for partial publication in the Official Reports. For good cause it now appears that the full opinion should now be published in the Official Reports and it is so ordered. Pollak, Acting P.J. (Certified for Publication.)

Division Four

A119151 – In re L.P. et al., a Person Coming Under the Juvenile Court Law. Humboldt County Department of Health & Human Services v. Cindy B. et al.

The order is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Division Five

A119097 – Julio Mestre v. Nathaniel Ford, Sr., Executive Director of the San Francisco Municipal Transportation Agency, et al.

By The Court: The opinion filed March 27, 2008 is modified as follows: (See Order). Respondent’s petition for rehearing filed April 10, 2008 is denied. The modification does not affect the judgment. Jones, P.J. (Not for Publication.)

Wednesday, April 16, 2008

Division One

A115568 – Angela M. Bradstreet, as Labor Commissioner, etc. v. Anna Wong et al., Chinese Progressive Association.

The order awarding attorney fees to defendants is reversed. CPA is awarded its costs on appeal. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

A118593 – Aschilew Jember et al. v. Addis Alemu et al.

By The Court: Appellants' Motion for Reconsideration Against the Court Order to Dismiss Appeal Dated March 17, 2008, filed March 27, 2008, is deemed a petition for rehearing pursuant to California Rules of Court, rule 8.268, and is hereby denied. Swager, Acting P.J. (Not for Publication.)

A115368 & A116517 – Robert Huberman v. Raymond J. Steffen, III, et al.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

A113760 – Angela M. Bradstreet, as Labor Commissioner, etc. v. Anna Wong et al.

A114106 – Angela M. Bradstreet, as Labor Commissioner, etc. v. Anna Wong et al., Yan Fang Mei.

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Certified for Publication.)

Division Two

A114925 – The People v. Lawson Bryant.

The judgment is affirmed. Kline, P.J. We Concur: Lambden, J., Richman, J. (Not for Publication.)

A118628 – In re Eric Y., a Person Coming Under the Juvenile Court Law. San Mateo County Human Services Agency v. K.W.

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Wednesday, April 16, 2008 (Continued)

A116968 – The People v. Gary Winn Perry.

By The Court: The opinion filed herein on April 8, 2008 is modified as follows: (See Order).

This modification does not effect a change in the judgment. Haerle, Acting P.J. (Not for Publication.)

A119298 – The People v. Jesse James Connolly.

Accordingly the judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Richman, J. (Not for Publication.)

A117987 – In re T.F., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. James F.

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Richman, J. (Not for Publication.)

A117006 – The People v. Jose Alberto Hernandez.

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Three

A120110 – The People v. The Superior Court of San Francisco County; Anthony Earl, R.P.I.

Let a writ of mandate issue directing the superior court to vacate its order granting real party's motion to suppress and to enter a new and different order denying that motion.

The stay previously ordered by this court on December 27, 2007, is dissolved. Siggins, J. We Concur: McGuinness, P.J., Pollak, J. (Not for Publication.)

Division Four

A114774, A115133 – Charlton Clemmer et al. v. John Crane Inc.

We vacate the order conditionally granting John Crane's motion for a new trial insofar as it requires Clemmer's consent to a remittitur, and modify the order to limit the scope of the new trial to the issue of the apportionment of liability among the parties. The cross-appeal is dismissed as moot. The parties shall bear their own costs on the appeals. Rivera, J. We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

Wednesday, April 16, 2008 (Continued)

Division Five

A118391 – The People v. Royce C. Wilson.

The judgment is affirmed Needham, J. We Concur: Simons, Acting P.J., Stevens, J.*
(Not for Publication.)

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

Thursday, April 17, 2008

Division One

A112132 – D’amborsio Brothers Investment Company v. Peter O’Malley et al.

By The Court: It is ordered that the opinion filed herein on March 25, 2008, be modified to delete the fifth sentence in the first paragraph on page 1, which reads: (See Order).

In place of the deleted sentence, the following sentence should be added: (See Order).

There is no change in the judgment.

Plaintiffs’ petition for rehearing is denied. Marchiano, P.J. (Not for Publication.)

A115799 – The People v. Darnell Joseph Earby.

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Division Two

A118670 – The People v. David Peterson.

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

A118355 – Ruben Guerrero v. Rodan Termite Control, Inc., et al.

The order from which the appeal was taken is affirmed. Plaintiff shall recover his costs on appeal. Pollak, Acting P.J. We Concur: Siggins, J., Jenkins, J. (Certified for Publication.)

Division Four

A119579 – The People v. Joseph Allen Broussard.

The judgment is affirmed. Ruvolo, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

A118143 – Caren Bufil v. Dollar Financial Group, Inc.

The judgment is reversed. Reardon, J. We Concur: Ruvolo, J., Rivera, J. (Not for Publication.)

MINUTES
COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

Thursday, April 17, 2008

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J., Simons, J., Needham, Jr., J., Stevens, J.,* and Eric F. Cyman, Deputy Clerk.

A112742 The People,
 v.
 John Earl Green.
Cause called and argued by Mark David Greenberg, counsel for appellant, and by Sharon G. Birenbaum, counsel for respondent. Cause ordered submitted.

A118724 Glenda Welch et al.,
 v.
 Big Dog City et al.
Cause called and argued by Samuel M. Zaif, counsel for appellant, and by John Kelley, counsel for respondent. Cause ordered submitted.

A116980 The People,
 v.
 Dushay Williams.
Cause called and argued by Paul Ricahrd Kleven, counsel for appellant, and by Rene A. Chacon, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Needham left the bench and Justice Simons entered.

A118683 Willie Roberson et al.,
 v.
 Allstate Insurance Company.
Cause called and argued by Jeffry Butler, counsel for appellant, and by Lisa Costello, counsel for respondent. Cause ordered submitted.

A114380 Ming F. Woo et al.,
 v.
 Eric W. Lien et al.
Cause called and argued by Sam Walker, counsel for appellant, and by Howard Underwood, counsel for respondent. Cause ordered submitted.

A115177 William J. Murphy Jr.,
v.
Maureen Murphy.
Cause called and argued by David Walter Baer, counsel for appellant, and by F. Thomas Huster, counsel for respondent. Submission deferred for possible further briefing.

At this point in the proceedings Justice Stevens left the bench and Justice Needham entered.

A115026 The People,
v.
Marcella Lunsford.
Cause called and argued by Stephen B. Bedrick, counsel for appellant, and by Sharon Wooden, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Jones left the bench and Justice Stevens entered.

A116980 Allied Property & Casualty Insurance Company,
v.
St. Eugene's Elementary School et al.
Cause called and argued by David Michael Ingram, counsel for appellant, and by Adrienne Marie Moran, counsel for respondent. Cause ordered submitted.

Court adjourned at 12:07 p.m.

*Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, April 17, 2008 (Continued)

Division Five

A117033 – Aron D. Castlin v. Richard J. Kirkland et al.

The judgment is affirmed. In the interests of justice, each side shall bear its own costs.
(Cal. Rules of Court, rule 8.278(a)(5).) Simons, Acting P.J. We Concur: Needham, J., Stevens,
J. * (Not for Publication.)

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

Friday, April 18, 2008

Division Three

A118741 – The People v. Anthony Robert McCoy.

The judgment is affirmed. McGuiness, P.J. We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

Division Four

A115025 – The People v. Jose Luis Vogel-Leyva.

By The Court: The Petition for rehearing is denied. Reardon, Acting P.J.

Division Five

A114325 – Paul W. Van Etten v. Alliance Financial Capital, Inc. et al.

The judgment is reversed and the action remanded for further proceedings consistent with this opinion. Costs are awarded to Van Etten. (Not for Publication.)

A110930/A111450 – Marietta Harvey v. Sybase, Inc.

We reverse the superior court's grant of JNOV to Sybase on the issue of punitive damages and direct the superior court to reinstate the jury's punitive damages verdict. We remand the award of attorney fees with directions that the superior court restore to the fee award an appropriate amount for time spent on the punitive damages issue. In all other aspects, the judgment is affirmed. Each party shall bear its own costs on appeal. Simons, J. We Concur: Jones, P.J., Stevens, J.* (Certified for Partial Publication.)

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

Monday, April 21, 2008

Division One

A114334 – Frank Chavez v. Netflix, Inc., Laura Ellis.

A115395 – Frank Chavez v. Netflix, Inc., David Meininger et al.

A115571 – Frank Chavez v. Netflix, Inc., John Vogel.

The trial court did not abuse its discretion in approving the amended class action settlement agreement, approving the notice given to class members, or determining the amount of fees to which class counsel was entitled. The order approving settlement, order approving fees and expenses, and order approving additional fees are affirmed. Costs in cases Nos. A114334, A115395, and A115571 are awarded to respondents. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Certified for Publication.)

Division Two

A116625 – The People v. Brandon L. Jones.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Division Three

A117949 – The People v. Osvaldo Alzaga Sanchez

The judgment is affirmed. McGuiness, P.J. We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

Division Four

A117151 – Phillip L. Kern et al. v. Jim Severe et al.

The judgment is affirmed. Ruvolo, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

A115354 – Jorge Gallegos v. State of California.

The judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Monday, April 21, 2008 (Continued)

A117794 – The People v. Willard Michael House.

The judgment is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J.
(Not for Publication.)

Division Five

A118529 – In re Zachary M., a Person Coming Under the Juvenile Court Law. The People v. Zachary M.

The July 19, 2007 dispositional order is affirmed. Stevens, J.* We Concur: Jones, P.J., Simons, J. (Not for Publication.)

A117507 – In re N.M., a Person Coming Under the Juvenile Court Law. The People v. N.M.

The juvenile court orders are affirmed. Stevens, J.* We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

Tuesday, April 22, 2008

Division Two

A119674 – The People v. Marcus Johnson.

The order appealed from is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Richman, J. (Not for Publication.)

A114997 – In re the Marriage of Katherine T. and John Ford. Katherine T. Ford v. John Ford.

A115857 – In re the Marriage of Katherine T. and John Ford. Katherine T. Ford v. John Ford.

The judgment is affirmed. Katherine is to pay the costs of appeal. Lambden, J. We Concur: Haerle, Acting P.J., Richman, J. (Not for Publication.)

Division Three

A118149 – The People v. Duane Scott Joachim.

The conviction for misdemeanor possession of burglar's tools is reversed. As modified, the judgment is affirmed. Jenkins, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

A118861 – In re John G., a Person Coming Under the Juvenile Court Law. The People v. John G.

The matter is remanded to the juvenile court with directions (1) to exercise its discretion to designate the sustained vandalism offense, as alleged in count two of the April 19, 2007 petition, as a felony or a misdemeanor, pursuant to Welfare and Institutions Code section 702 and California Rules of Court, rule 5.795(a); and (2) to modify the commitment order to reflect that the youth is ordered to pay a restitution fine of \$100. In all other respects, the jurisdictional and dispositional orders are affirmed. Jenkins, J. We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

A117840 – The People v. Michael Edward Estrada.

The judgment is affirmed. Siggins, J. We Concur: Pollak, Acting P.J., Jenkins, J. (Not for Publication.)

A116692 – The People v. Juston Michael Potts.

The judgment is affirmed. Pollak, Acting P.J. We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Tuesday, April 22, 2008

The Court convened at 9:30 a.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Reardon, Acting P.J. and Sepulveda, J.; Channing Hoo, Deputy Clerk; CHP Officer Kevin Bartlett, Bailiff.

A115811

People

v.

Sael Araujo

Cause called. Each counsel confirmed waiving Presiding Justice Ruvolo's presence on the bench. Syda Kosofsky argued for appellant Araujo. Michael Banister argued for respondent. Cause submitted.

Court adjourned at 9:44 a.m.

Tuesday, April 22, 2008 (Continued)

Division Five

A120232 – The People v. Carlos A. Cardona.

The judgment is affirmed. Needham, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

A113072 – The People v. Gary Bernard Moore.

The judgment is affirmed.

By order of this same date, we are denying appellant's petition for writ of habeas corpus in A118654. Jones, P.J. We Concur: Simons, J., Stevens, J.* (Not for Publication.)

A113637 – The People v. Demetris Dixon.

The four-year upper term sentence for corporal injury to a cohabitant under count 4 is vacated and the case is remanded to the trial court for resentencing in accordance with the procedure outlined in *Sandoval, supra*, 41 Cal.4th at pp. 843-852. The judgment is otherwise affirmed. Needham, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

A115515 – Norbert A. Lewandowski et al. v. Steven Murdock.

The interlocutory judgment is affirmed. Jones, P.J. We Concur: Needham, J., Stevens, J.* (Not for Publication.)

A117331 – Norbert A. Lewandowski et al. v. Steven Murdock.

The order denying appellant's motion to vacate the judgment is affirmed. Jones, P.J. We Concur: Needham, J., Stevens, J.* (Not for Publication.)

A117778 – In re Dominick L., Jr., a Person Coming Under the Juvenile Court Law. Solano County Department of Health and Social Services v. Dominick L.

The order is affirmed. Needham, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

Wednesday, April 23, 2008

Division One

A115104 – The People v. Marchan A. King.

The judgment is affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Division Two

A115491 – State Building and Construction Trades Council of California v. John C. Duncan as Director, etc., et al.; Southern California Housing Development Corporation, R.P.I.

A115663 – State Building and Construction Trades Council of California v. John C. Duncan as Director, etc., et al.; Southern California Housing Development Corporation, R.P.I.

The purported appeals from the writ of mandate are dismissed. The order granting the petition for a writ of mandate is reversed, and the cause is remanded to the trial court with direction to: (1) recall the writ of mandate; (2) set aside the order granting the petition; and (3) enter a new order denying the petition. Appellants shall recover their costs on appeal. Richman, J. We Concur: Haerle, Acting P.J., Lambden, J. (Certified for Publication.)

A116215 – In re Shaun V., a Person Coming Under the Juvenile Court Law. The People v. Shaun V., Barbara Perry et al.

The judgment is reversed and the matter remanded to the trial court for further proceedings consistent with this opinion. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, April 23, 2008

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Presiding Justice McGuiness, Siggins, J., Horner, J. (pro tem), and A. Reasoner, Deputy Clerk.

A117206 Joseph Myers, et al,
 v.
 California Public Employees Retirement System
Cause called and argued by Steven R. Pingel, counsel for appellant, and Terry A. Senne, counsel for respondent. Cause ordered submitted.

At this point, Horner, J. left the bench and Jenkins, J. joined the bench. The arguments continued with McGuiness, P.J., Siggins, J., and Jenkins, J.

A120611 Norma B.
 v.
 Superior Court of Solano County,
 Solano County Health and Social Services Department, Real Party in Interest
Cause called and argued by Amanda Inocencio, counsel for petitioner, and Chastine Fish Gaspar, counsel for Real Party in Interest. Counsel for real party in interest appeared by telephone. Cause ordered submitted.

A114482 People
 v.
 Frankie Allen Hernandez
Cause called and argued by John Jordan, counsel for appellant, and Jeff Laurance, counsel for respondent. Cause ordered submitted.

At this point, Jenkins, J. left the bench and Pollak, J. joined the bench. The arguments continued with McGuiness, P.J., Pollak, J. and Siggins, J.

A116239 Thomas Sampson, et al
 v.
 J.A.M.S., Peter St. Geme, et al
Cause called and argued by Timothy Murphy, counsel for appellants, Charles Rice, counsel for respondent Peter St. Geme, and Joseph McMonigle, counsel for respondent J.A.M.S. Cause ordered submitted.

At this point, Siggins, J. left the bench and Jenkins, J. rejoined the bench. The

arguments continued with McGuiness, P.J., Pollak, J., and Jenkins, J.

A114111 In re Inez Tito Lugo,
A118706 On Habeas Corpus
Cause called and argued by Damon McClain, counsel for appellant, and Keith Wattley, counsel for respondent. Cause ordered submitted.

At this point, McGuiness, P.J. left the bench and Siggins, J. rejoined the bench. The arguments continued with Pollak, Acting P.J., Siggins, J., and Jenkins, J.

A117268 James Malveaux, et al,
v.
Osun Toki Banjoko, et al
Cause called and argued by Randal Barnum, counsel for appellants, and Howard Moore, Jr., counsel for respondents. Cause ordered submitted.

A119197 Phillip Hwee
v.
Ronald P. Mar, et al
Cause called and argued by Phillip Hwee, counsel for appellant, and Amelia Vetrone, counsel for respondents. Cause ordered submitted.

COURT ADJOURNED

Wednesday, April 23, 2008 (Continued)

Division Four

A118531 – The People v. Robert James Grimmer.

We conclude that the trial court lacked authority to increase to \$800 the \$200 restitution fine previously imposed in case No. SC143241A under section 1202.4, subdivision (b), and to impose a parole revocation fine in the amount of \$800 under section 1202.45. Each must be reduced to \$200. In all other respects the judgment is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Division Five

A117076 – The People v. Armando Monter Jacinto.

The order dismissing the information is reversed. Jones, P.J. We Concur: Needham, J., Stevens, J.* (Certified for Publication.)

A116543 – Frederick Benson v. Rhino Industries, Inc., et al.

The judgment in favor of Benson on the first and fourth causes of action is affirmed. The judgment in favor of Rhino and Core on the sixth and seventh causes of action is affirmed. We remand to the trial court with instructions that, if the court designated Benson as the prevailing party in the trial court, it is to make an award of appropriate attorney fees on appeal to Benson. The parties shall bear their own costs on appeal. Simons, Acting P.J. We Concur: Needham, J., Stevens, J.* (Not for Publication.)

A115297 – Pacific Bell Telephone Company v. Lyles Diversified, Inc.

The judgment is affirmed. Each side to bear its own costs. Jones, P.J. We Concur: Simons, J., Stevens, J.* (Not for Publication.)

A116980 – The People v. Dushay Williams.

The judgment is affirmed. Stevens, J.* We Concur: Jones, P.J., Needham, J. (Not for Publication.)

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

Thursday, April 24, 2008

Division Two

A117953 – The People v. Malcolm Andre Clark.

The judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Richman, J.
(Not for Publication.)

A118323 – The People v. Oscar Lionel Mayorga.

The judgment of conviction is affirmed. Richman, J. We Concur: Kline, P.J., Haerle, J.
(Not for Publication.)

Division Four

A119975 – In re S. S., a Person Coming Under the Juvenile Court Law. The People v. S. S.

The orders of the juvenile court are affirmed. Sepulveda, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

Division Five

A117236 – In re K.J., a Person Coming Under the Juvenile Court Law. The People v. K.J.

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Needham, J. (Not for Publication.)

Friday, April 25, 2008

Division One

A117297 – The People v. Milton Eaton.

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

A118374 – In re Timothy M. et al., Persons Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Michael M. et al.

The judgment of the trial court is affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

A121228 – Ronald Houff v. The Superior Court of the City and County of San Francisco; The People, R.P.I.

By The Court: Petitioner, Ronald Houff, seeks a writ of prohibition restraining the Superior Court of the City and County of San Francisco from further proceedings in the instant case. The parties are familiar with the factual and procedural history of the case, and we need not reiterate it here in detail. (*People v. Garcia* (2002) 97 Cal.App.4th 847.)

Petitioner contends the superior court granted his motion under Penal Code section 995 to dismiss the information on April 15, 2008, but then improperly reconsidered and denied the motion on the following day after reading additional authority relevant to the motion. The People concede that the court made a final order when it granted petitioner's motion on April 15, 2008, and that it had no authority subsequently to reconsider the motion in order to correct judicial error. (See *Smith v. Superior Court* (1981) 115 Cal.App.3d 285, 288-290.)

In requesting that we direct the superior court to vacate its order of April 16, 2008, in which it denied petitioner's motion after reconsideration, the People implicitly waive oral argument and stipulate to the immediate issuance of the remittitur. We have also afforded all parties prior notice that we might issue our peremptory writ in the first instance. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 177-180.)

Therefore, let a peremptory writ of prohibition issue restraining respondent the Superior Court of the City and County of San Francisco from taking any further action in case No. SCN-204260 other than dismissal, without prejudice to the People's right to appeal.

This opinion is final for all purposes immediately upon filing, and the clerk of this court shall forthwith issue the remittitur. The stay issued on April 17, 2008, is hereby dissolved.

Before Marchiano, P.J., Stein, J., and Swager, J. (Not for Publication.)

Friday, April 25, 2008 (Continued)

Division Two

A118216 – Conservatorship of the Person and Estate of Gladys McDaniel. Gladys McDaniel v. Kenneth Greer.

The order appealed from is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

A120611 – Norma B. v. The Superior Court of Solano County; Solano County Department of Health and Social Services, R.P.I.

The petition for extraordinary writ is denied on the merits. (§ 366.26, subd. (1); Cal. Rules of Court, rule 5.600; see *Kowis v. Howard* (1992) 3 Cal.4th 888,893-895 [written opinion on petition for extraordinary relief precludes reconsideration of or further challenge to orders in any subsequent appeal].) Our opinion is final as to this court forthwith. (Cal. Rules of Court, rule 8.264(b)(3).) McGuiness, P.J. We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

Division Four

A113296 – The People v. Ronald Lee Canada.

The conviction for assault with a firearm is reversed. In other respects, the judgment is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

A119748 – The People v. H. Blake Barclay.

The judgment is affirmed. Sepulveda, J. We Concur: Ruvo, P.J., Rivera, J. (Not for Publication.)

A119596 – The People v. Victor Worner Wilson, Jr.

Judgment affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Friday, April 25, 2008 (Continued)

Division Five

A118683 – Willie Roberson et al. v. Allstate Insurance Company.

The court's July 20, 2007 order is affirmed. The Robersons shall recover their costs on appeal. Stevens, J.* We Concur: Jones, P.J., Simons, J. (Not for Publication.)

A119140 – In re Heather S. et al., Persons Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Eugene R.

The order terminating Father's parental rights is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J.* (Not for Publication.)

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

Monday, April 28, 2008

Division One

A118513 – The People v. Dandre Green.

We find no arguable issues that require further briefing and accordingly, affirm the judgment. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A117513 – Consolidated Management Group, LLC et al. v. California Department of Corporations.

The judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Certified for Publication.)

Division Three

A118305 – Wymac Capital, Inc. v. Shannon Anderson et al., David R. Medlin.

The May 1, 2007 and May 24, 2007 orders enforcing the settlement agreement against Medlin are reversed. Medlin shall recover his costs on appeal. Pollak, J. We Concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

A117206 – Joseph Myers et al. v. California Public Employees' Retirement System et al.

The judgment is affirmed. Respondents shall recover their costs on appeal. Horner, J.* We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

A114482 – The People v. Frankie Allen Hernandez.

The judgment is affirmed. McGuiness, P.J. We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, April 29, 2008

Division One

A119143 – The People v. Frank D. Thomas.

After a full review of the record, we find no arguable issues and, accordingly, affirm the judgment. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

A116410 – The People v. Richard Edmond Benge.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

**A119311 – In re Alejandro L., a Person Coming Under the Juvenile Court Law.
The People v. Alejandro L.**

The order is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A118233 – Estate of Gertrude C. Daley, Deceased. Gregory P. O’Keeffe, as
Administrator, etc. v. Ronald Daley.**

The order is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

Division Two

A119412 – The People v. Jessica Sobel.

The orders appealed from are affirmed. Haerle, J. We Concur: Kline, P.J., Richman, J. (Not for Publication.)

A117805 – Virginia Fuller v. Sharon Ceasar et al.

The judgment is affirmed. Respondents are awarded their costs in connection with this appeal. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

A117126 – Richard Castro et al. v. T-Mobile USA, Inc. et al.

The order appealed from is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A118603 – The People v. Gregory Allen Taggart.

The judgment and sentence imposed are affirmed. Kline, P.J. We Concur: Lambden, J., Richman, J. (Not for Publication.)

Tuesday, April 29, 2008 (Continued)

A118800 – The People v. Ernesto Ochoa Urvano.

The judgment and sentence imposed are affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

A119851 – The People v. Matthew Francis Miceli.

Our independent review having found no arguable issues that require briefing, the judgment of conviction is affirmed. Richman, J. We Concur: Kline, P.J. Haerle, J. (Not for Publication.)

Division Three

A118795 – In re Charles M., a Person Coming Under the Juvenile Court Law. The People v. Charles M.

The dispositional order filed on July 16, 2007 is affirmed. Jenkins, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

A119419 – The People v. Patrick Dewin McDaniel.

The judgment is reversed and the matter is remanded to the trial court for resentencing. Pollak, Acting P.J. We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

A116470 – The People v. Marvin James Hatch.

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

Division Four

A116117 – The People v. Jairo Flores.

The judgment is affirmed. Ruvolo, P.J. We Concur: Reardon, J., Rivera, J. (Not for Publication.)

A117919 – The People v. Jhomari Cory Sutton.

The judgment is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Tuesday, April 29, 2008 (Continued)

A114956 – Bay Area Cellular Telephone Company et al. v. City of Union City.

The judgment is affirmed. Rivera, J. We Concur: Ruvolo, P.J., Sepulveda, J. (Certified for Publication.)

Division Five

A118872 – The People v. David Zvonko Skuljan.

The judgment is affirmed. Jones, P.J. We Concur: Needham, J., Stevens, J.* (Not for Publication.)

A115026 – The People v. Marcella Lunsford.

The jury's true finding on the witness killing special circumstance under section 190.2, subdivision (a)(10) is vacated. The judgment, including the sentence of life without the possibility of parole, is otherwise affirmed.† Needham, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

† See footnote 8 in opinion.

Wednesday, April 30, 2008

Division One

A116893 – The People v. Evile Seuseu.

The judgment and sentence are affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication.)

A118951 – The People v. Anthony C. Bolton.

The judgment of conviction is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

A119315 – The People v. Richard Lamar Stamper.

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Division Two

A116866 – In re the Marriage of Judy T. and Mete Senocak. Judy T. Senocak v. Mete Senocak, Sonoma County Department of Child Support Services.

The judgment is affirmed. Richman, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

A119197 – Phillip Hwee v. Ronald P. Mar et al.

The judgment is affirmed. The request for sanctions is denied. Costs are awarded to respondents. Siggins, J. We Concur: Pollak, Acting P.J., Jenkins, J. (Not for Publication.)

A117268 – James Malveaux et al. v. Osun Toki Banjoko et al.

The order filed on December 29, 2006, denying the special motion to strike the fraud cause of action against defendants Osun Toki Banjoko and Youth and Family Services Inc. of Solano County in the first amended complaint, is affirmed. Plaintiffs are awarded costs on this appeal. Siggins, J. We Concur: Pollak, Acting P.J., Jenkins, J. (Not for Publication.)

A116239 – Thomas G. Sampson et al. v. Judicial Arbitration and Mediation Services, Inc., et al.

The orders sustaining the demurrers and dismissing the petition for writ of mandate are affirmed. Siggins, J. We Concur: McGuinness, P.J., Pollak, J. (Not for Publication.)

Wednesday, April 30, 2008 (Continued)

A119724 – The People v. Justin P.

The orders of the juvenile court are affirmed. Siggins, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

Division Four

A118032 – The People v. Shawna Lea Brown.

The judgment is reversed, and the case is remanded to the trial court with directions to enter a judgment of acquittal. Ruvolo, P.J. We Concur: Reardon, J., Rivera, J. (Not for Publication.)

A118322 – Harvey J. Thompson, III v. The Regents of the University of California.

The judgment is affirmed. Costs on appeal to the University. Ruvolo, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

A120945 – Angel B. v. The Superior Court of San Mateo County; San Mateo County Human Services Agency, R.P.I.

Mother's petition for an extraordinary writ is denied on its merits. (§ 366.26 subd. (l); Cal. Rules of Court, rule 8.452(i).) This decision shall be final immediately. (Cal. Rules of Court, rule 8.264(b)(2)(A).) The request for a stay of the section 366.26 hearing to be held on June 11, 2008, is denied as moot. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Division Five

A1117810 – A. Lewis Chandler v. Mortgage Electronic Registration Systems, Inc., et al.

The judgment is affirmed. Jones, P.J. We Concur: Simons, J., Needham, J. (Not for Publication.)

A119324 – The People v. Joseph L. Lopes.

The judgments are affirmed. Jones, P.J. We Concur: Simons, J., Stevens, J.* (Not for Publication.)

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

Wednesday, April 30, 2008 (Continued)

A118195 – In re Rodney S., a Person Coming Under the Juvenile Court Law. The People v. Rodney S.

The order is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J.* (Not for Publication.)

A117575 – Allied Property & Casualty Insurance Company v. St. Eugene's Elementary School, et al.

The judgment is affirmed. Stevens, J.* We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

A116429 – The People v. Darrell Moore.

The judgment is affirmed. Needham, J. We Concur: Jones, P.J., Simons, J., (Not for Publication.)

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

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